

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

GENARRO D. SHUMPERT

PETITIONER

V.

NO. 1:09CV158-A-D

STATE OF MISSISSIPPI, et al.

RESPONDENTS

CERTIFICATE OF APPEALABILITY

Pursuant to the amendment of Rule 11(a) of the Rules Governing 28 U.S.C. §§ 2254 or 2255, and the amendment of FRAP 22, the court hereby finds that:

PART A

the applicant has made a substantial showing of the denial of a constitutional right.

SPECIFIC ISSUE(S):

a certificate of appealability should not issue.

REASONS FOR DENIAL: For the reasons stated in the Report and Recommendations dated November 18, 2009, the court finds that the Petitioner has failed to "demonstrate that the issues are debatable among jurists of reason; that a court could resolve issues in a different manner; or that the questions are adequate to deserve encouragement to proceed further." *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4, 103 S. Ct. 3383, 3394 n.4, 77 L. Ed. 2d 1090 (1993) (citations and quotations omitted). Specifically, the court finds, for the reasons set forth in the Report and Recommendations adopted as the opinion of the court, that Petitioner's conviction and sentence are not unconstitutional.

PART B

the party appealing is entitled to proceed *in forma pauperis*.

the party appealing is not entitled to proceed *in forma pauperis*.

REASONS FOR DENIAL: The Court finds that the Petitioner's appeal is not taken in good faith because it is frivolous and has no possibility of success. *See* FRAP 24.

Date: December 9, 2009

/s/ Sharion Aycock
U.S. DISTRICT JUDGE